

**REMARKS**

Claims 1-5 and 77-92 are pending in the present application.

By this Amendment, claims 1 and 77 are amended and new claim 106-138 are added.

Claims 6-76 and 93-105 are cancelled without prejudice or disclaimer. It is respectfully submitted that claims 1-5 and 77-92 and new claims 106-138 are in condition for allowance in view of the amendments and remarks presented herein.

**SUMMARY OF ACTION**

Claims 1-5 and 77-92 are pending in the above-captioned application. The Office Action objects to claims 100-105 under 37 C.F.R. § 1.75(c) as being in improper dependent form for failing to further limit the subject matter of a previous claim. Claims 1-5 and 77-105 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of U.S. Patent No. 6,281,236 and claims 1-34 of U.S. Patent No. 6,329,413. Claims 1-3 and 95-97 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kuroda (JP 58-140013). Claim 1-3, 77-78, 81-86 and 95-99 are rejected under 35 U.S.C. § 102(b) as being anticipated by Grollier I (U.S. Patent No. 4,933,177) or Grollier II (U.S. Patent No. 4,767,618). Claims 1-5, 77-86 and 95-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuroda in view of Grollier II. Claims 1-5 and 77-105 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kuroda in view of Grollier II (as applied to claims 1-5, 77-86 and 95-101) and further in view of Grollier III (U.S. Patent No. 4,880,621) and Briggs (U.S. Patent No. 5,871,754).

**Claim Objections**

Claims 100-105 are objected to under 37 C.F.R. § 1.75(c) as being in improper dependent form for failing to further limit the subject matter of a previous claim.

By this Amendment, claims 100-105 have been cancelled without prejudice or disclaimer. Accordingly, withdrawal of these objections is respectfully requested.

**Double Patenting**

Claims 1-5 and 77-105 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of U.S. Patent No. 6,281,236 and claims 1-34 of U.S. Patent No. 6,329,413.

The Terminal Disclaimer filed herewith obviates these rejections. Accordingly, withdrawal of these rejections is respectfully requested.

**Claim Rejections - 35 U.S.C. § 102(b)**

Claims 1-3 and 95-97 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kuroda (JP 58-140013). The rejection is respectfully traversed.

The Office Action states, among other things, Kuroda “discloses topical oil-in-water emulsions comprising allantoin (see claim 1),” that such emulsions employ “an acidic wax such as white vasoline, paraffin or squalane” and that Kuroda et al. “recites the use [of] anionic surfactants namely sodium alkyl sulfates such as sodium lauryl sulfate....” The Office Action also states that Kuroda discloses compositions having pH ranges of between 4-7.

Kuroda discloses several allantoin-containing compositions containing no more than 0.4% allantoin and having pH values of approximately 4-7. Significantly, Kuroda does not teach or suggest an allantoin-containing composition “wherein the pH of the composition is in a range of from about 3.0 to about 6.0 and the allantoin being stable in the emulsion for at least 90 days at 40° C” as recited in independent claims 1 and 77. Kuroda, therefore, fails to teach the features of independent claims 1 and 77 and of the corresponding dependent claims. Therefore,

withdrawal of the rejection of claims 1-3 and 95-97 under 35 U.S.C. § 102(b) based upon Kuroda is respectfully requested.

**Claim Rejections - 35 U.S.C. § 102(b)**

Claim 1-3, 77-78, 81-86 and 95-99 are rejected under 35 U.S.C. § 102(b) as being anticipated by Grollier I (U.S. Patent No. 4,933,177) or Grollier II (U.S. Patent No. 4,767,618). The rejection is respectfully traversed.

The Office Action states that Grollier I discloses oil-in-water emulsion compositions containing, among other things, allantoin, propylene glycol, mineral oils, fatty body wax (*e.g.*, carnauba wax or bees wax), thickening agents (*e.g.*, guar gum, alginates, methyl cellulose and starch) and that it claims compositions that include a variety of plant-based ingredients including, for example, witch hazel, “in combination with a fatty body, such as beeswax, a thickening agent such as a carbohydrate polymer, [and] an emulsifier such as sodium lauryl sulfate....”

The Office Action states that Grollier II discloses oil-in-water emulsions that can contain, among other things, beeswax (to assist in oil retention), herbal components, anionic surfactants (*e.g.*, sodium lauryl sulfate), solvents (*e.g.*, propylene glycol or cetyl alcohol), perfumes, a pH modifier, antioxidants and preservatives. Select compositions disclosed in Grollier II can also include allantoin.

Grollier I and Grollier II disclose a number of compositions, some of which contain allantoin. None of these allantoin-containing compositions, however, disclose pH values. Furthermore, none of the compositions disclosed in Grollier I or Grollier II disclose stability of the compositions at a particular temperature and/or over a particular time period. As such, neither Grollier I nor Grollier II discloses a pH range or the stability characteristics of the instant application and, in particular, do not teach or suggest an allantoin-containing composition

“wherein the pH of the composition is in a range of from about 3.0 to about 6.0 and the allantoin being stable in the emulsion for at least 90 days at 40° C” as recited in independent claims 1 and 77. Grollier I and Grollier II, therefore, fail to teach the features of independent claims 1 and 77 and of the corresponding dependent claims. Therefore, withdrawal of the rejection of claims 1-3, 77-78, 81-86 and 95-99 under 35 U.S.C. § 102(b) based upon Grollier I or Grollier II is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103(a)**

Claims 1-5, 77-86 and 95-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuroda in view of Grollier II. The rejection is respectfully traversed.

Applicant reiterates the comments set forth above regarding Kuroda and Grollier II as applied to claims 1-3, 77-78, 81-86 and 95-99. Specifically, none of the references discloses allantoin-containing compositions “wherein the pH of the composition is in a range of from about 3.0 to about 6.0 and the allantoin being stable in the emulsion for at least 90 days at 40° C” as recited in independent claims 1 and 77 or in the corresponding dependent claims. Additionally, Grollier II fails to supply the deficiencies of Kuroda. Thus, the combination of Kuroda and Grollier II fails to provide the invention recited in independent claims 1 and 77.

Moreover, Kuroda and Grollier II do not provide the requisite motivation to combine or modify their teachings to arrive at the invention recited in independent claims 1 and 77 or the corresponding dependent claims. Thus, it is respectfully submitted that Kuroda and Grollier II fail to teach or suggest the invention recited in independent claims 1 and 77 or in the corresponding dependent claims. Therefore, withdrawal of the rejection of claims 1-5, 77-86 and 95-101 under 35 U.S.C. § 103(a) based upon Kuroda in view of Grollier II is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103(a)**

Claims 1-5 and 77-105 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kuroda and Grollier II (as applied to claims 1-5, 77-86 and 95-101) and further in view of Grollier III (U.S. Patent No. 4,880,621) and Briggs et al. (U.S. Patent No. 5,871,754). The rejection is respectfully traversed.

Applicant reiterates the comments set forth above regarding Kuroda and Grollier II as applied to claims 1-3, 77-78, 81-86 and 95-99.

The Office Action asserts that Grollier III and Briggs (as well as Grollier II) teach the use of a variety of cosmetic components including oil retention agents (*e.g.*, bees wax), emollients (*e.g.*, cetyl alcohol), herbal components (*e.g.*, chamomile, St. John's wort), topical adjuncts, pH modifiers (*e.g.*, citric acid), antioxidants (*e.g.*, butylhydroxytoluene) and chelating agents (*e.g.*, EDTA).

Grollier III discloses the use of flowers and particles thereof in a variety of cosmetic compositions. Grollier III further discloses an allantoin-containing composition with an allantoin concentration of 0.5% by weight. Grollier III does not disclose compositions having an allantoin stability at particular temperatures and/or over particular time periods as recited in independent claims 1 and 77 or in the corresponding dependent claims.

Briggs discloses an allantoin-containing composition, among others, with an allantoin concentration of 0.1% by weight. Briggs does not disclose compositions having an allantoin stability at particular temperatures and/or over particular time periods as recited in independent claims 1 and 77 or in the corresponding dependent claims.

As discussed above, Kuroda and Grollier II do not disclose allantoin-containing compositions "wherein the pH of the composition is in a range of from about 3.0 to about 6.0 and

the allantoin being stable in the emulsion for at least 90 days at 40° C” as recited in independent claims 1 and 77 or in the corresponding dependent claims. In this regard, Grollier III and Briggs fail to supply the deficiencies of Kuroda and Grollier II. Thus, the combination of Kuroda, Grollier II, Grollier III and Briggs fails to provide the invention recited in independent claims 1 and 77 and the corresponding dependent claims.

In addition, Kuroda, Grollier II, Grollier III and Briggs do not provide the requisite motivation to combine or modify their teachings to arrive at the invention recited in independent claims 1 and 77 and in the corresponding dependent claims. In particular, none of the references discloses allantoin-containing compositions “wherein the pH of the composition is in a range of from about 3.0 to about 6.0 and the allantoin being stable in the emulsion for at least 90 days at 40° C” as recited in independent claims 1 and 77 or in the corresponding dependent claims. Thus, it is respectfully submitted that Kuroda, Grollier II, Grollier III and Brigg fail to teach or suggest the invention recited in independent claims 1 and 77 and in the corresponding dependent claims. Therefore, withdrawal of the rejection of claims 1-5 and 77-105 under 35 U.S.C. § 103(a) based upon Kuroda, Grollier II, Grollier III and Brigg is respectfully requested.

### **CONCLUSION**

In view of the foregoing, Applicant respectfully requests the reconsideration and timely allowance of the pending claims. Should the Examiner feel there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant’s undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1349. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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